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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20540

FILE: B-189949

DATE: November 15, 1977

MATTER OF:

Fortec Constructors

DIGEST:

Uncertainty as to intended bid does not bar bid correction where uncertain amount is relatively small compared to difference between corrected bid and next low bid and is within relatively narrow range so as to not be inconsistent with clear and convincing evidence of what bid would have been.

Pursuant to a mistake in bid alleged before award, Fortec Constructors requests a \$41,283 increase in its contract awarded under invitation for bids (IFB) No. DACA63-77-B-0081 issued by the Fort Worth District, U.S. Army Corps of Engineers (Corps), on May 12, 1977.

The IFB called for the construction of the United States Armed Forces Reserve Center at Albuquerque, New Mexico. At bid opening, 2 p.m. on June 29, 1977, Fortec submitted the low bid of \$3,312,000. The second low bid was \$3,474,000. At 3:25 p.m. on June 29, the Corps received a TWX from Fortec advising that Fortec had discovered a clerical error of \$40,000 in its bid and requesting an increase in that amount. By follow-up letter dated June 29, 1977, Fortec requested that its bid be increased by \$39,600, explaining that its mistake had occurred when an amount representing the mechanical work was erroneously transferred from the worksheet to the adding machine as \$4,400 instead of the intended \$44,000. On June 30, 1977, Fortec requested a further increase of \$1,683 for New Mexico state and local taxes of 4-1/4 percent on the \$39,600 increase previously requested. In support of its requests, Fortec submitted an adding machine tape, what is alleged to be its original worksheet, quotations from subcontractors for the mechanical work, and affidavits from Fortec's estimator and managing partner regarding the occurrence of the mistake.

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On August 15, 1977, Fortec was advised that the Office of the Corps of Engineers had denied its requests for increases but had authorized the contracting officer to allow Fortec to withdraw its bid or accept award at the price submitted at bid opening. It appears that this authorization followed a determination that although Fortec had established the existence of a mistake in its bid, it had not submitted clear and convincing evidence of its intended bid. By telegram of August 16, 1977, Fortec accepted award at its bid price, reserving the right to pursue correction of the mistake.

Our Office has consistently held that to be permitted correction of an error in bid alleged prior to award, a bidder must submit clear and convincing evidence showing that an error has been made, the manner in which the error occurred, and the intended bid price. 53 Comp. Gen. 232 (1973); see Armed Services Procurement Regulation § 2-406.3(s)(2) (1976 ed.).


We believe that the Corps' determination that Fortec failed to provide clear and convincing evidence was reasonable with regard to the precise, exact bid intended. Although the documents Fortec submitted clearly evidence a \$39,600 error, it cannot be determined from the worksheets submitted exactly what Fortec's bid would have been had the \$39,600 error not been made. In this regard, Counsel for Fortec explains that Fortec's bid was computed by (1) adding the various bid costs (such as the mechanical work), (2) adding a 3 percent mark-up and rounding it off, (3) adding an amount, figured at 4-1/4 percent, for taxes, and (4) since the amount added for taxes would also be taxed, by adding an additional amount to compensate for "the tax on tax aspect" as well as for other local fees and taxes. Counsel states that Fortec sought to "avoid controversy" by not claiming correction on the basis of these various factors, but only upon the basis of the clearly omitted \$39,600 and the 4-1/4 percent tax on that amount.

Although Fortec's work papers do not establish the precise bid intended, we think they do establish that, as a minimum, Fortec intended to include the \$39,600 and the 4-1/4 percent tax on that amount. While there is uncertainty as to exactly how much more Fortec's bid might have been had the \$39,600 not been omitted, we have recognized that an uncertainty within a relatively

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narrow range is not inconsistent with clear and convincing evidence of what a bid would have been. See George C. Martin, Inc., B-187638, January 19, 1977, 77-1 CPD 39 and Traweek Construction, B-183387, April 15, 1975, 75-1 CPD 227, citing Chris Berg, Inc., v. United States, 426 F. 2d 314 (Ct. Cl. 1970). In the present case, the uncertainty concerning the claimed intended bid is \$1,683 which is relatively small compared to the difference of \$120,717 between the corrected bid and the next low bid.

Consequently, in our view the relatively small amount involved should not bar the requested correction.


Deputy Comptroller General
of the United States